THE HON'BLE SRI JUSTICE

C.V.RAMULU

W.P.No.9233 of 1997

Dated:31.1.2007

Between
R.Mallaiah

.....Petitioner

and

1.The Additional Industrial Tribunal
cum Additional Labour Court, Hyderabad
and another.

...Respondents

THE HON'BLE SRI JUSTICE

C.V.RAMULU

W.P.No.9233 of 1997

ORDER:

This writ petition is filed challenging the Award made in I.D.No.276 of 1986 dated 07.11.1991 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad.

The petitioner is the workman. Second respondent is the Management-Andhra Pradesh State Road Transport Corporation, Hyderabad (for short 'APSRTC').

It appears that the services of the petitioner were terminated for certain misconduct alleged against him, after conducting a detailed enquiry into the matter. Aggrieved by the same, the petitioner raised dispute before the

conciliation machinery i.e., the Assistant Commissioner of Labour, Hyderabad-II and the same ended in failure. Ultimately, the matter was referred to the Government, which in turn, referred the matter to the Tribunal for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short 'the Act') to resolve the following issue.

> *"Whether the DM APSRTC Hyderabad-II Depot is justified in removing R.Mallaiah Ex-Conductor E58490 from service?*
>
> *If not to what relief the workmen is entitled?"*

Before the Tribunal, it was the case of the petitioner that the order of termination was arbitrary and illegal. The petitioner was suffering from loose motions and therefore, availed a day's casual leave on 11.6.1993. He was exhausted and weak,

but compelled to perform his duties to avoid loss of wages. Thus, while he was conducting the bus on the route from Thanda to Kodakandla X road, the officials of the Corporation checked the bus and found some cash and ticket irregularities. According to the petitioner, neither the enquiry was properly conducted nor the punishment imposed against the petitioner is proportionate to that of the misconduct alleged.

No oral evidence was adduced on either side. However, on behalf of the 2nd respondent-Corporation Exs.M1 to M21 were marked. On behalf of the petitioner-workman no documents were marked.

After a detailed consideration of the evidence available on record, the Tribunal came to the conclusion that the enquiry was properly conducted and therefore, the same is valid and the

charges are proved in full and the contention of the petitioner that he was unwell was not believed since there was no evidence. No medical certificate was produced from the Doctor who treated the petitioner and no passenger was examined to substantiate his contention. However, it was found that in the circumstances of the case, removal from service of the petitioner is disproportionate to the gravity of the charges proved. Therefore, while exercising its powers under Section 11-A of the Act, directed reinstatement of the petitioner as a fresh conductor. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner strenuously contended that the petitioner had put in 10 years of un-blemished service before his removal from service of the Corporation. Once,

the Labour Court found that the punishment is disproportionate to the gravity of the charges, it ought to have ordered at least continuity of service. Therefore, denying continuity of service and other benefits to the petitioner is arbitrary and illegal.

On the other hand, learned counsel for the respondent supported the Award passed by the Labour Court and submitted that past service of the petitioner was not clean. He was censured once, warned four times and his increment was also stopped once. Therefore, it cannot be said that the punishment of removal from service was disproportionate to that of the misconduct. In fact, the Labour Court has taken a lenient view of the matter and ordered reinstatement of the petitioner. No ground is made out to interfere with the award passed by the

Labour Court.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

There is no dispute that the petitioner was warned four times and his increment was stopped once and he was also censured. However, in the facts and circumstances of the case, Labour Court found that punishment of removal from service is disproportionate to the gravity of the charges proved against the petitioner. I am of the opinion that the reinstatement as ordered by the Tribunal denying 10 years of service put in by the petitioner, definitely, will have far reaching consequences. Therefore, the services rendered by the petitioner before his removal, at least, could have been treated as continuity of service for

the purpose of terminal benefits.

In the facts and circumstances of the case, I am of the opinion that the alleged misconduct is said to have been attempted but not committed. Thereafter, the checking officials collected the fare and allowed the bus to move. Once this is so, denying continuity of service, at least for the purpose of terminal benefits, cannot be said to be incorrect. Therefore, I deem it appropriate to modify the award passed by the Labour Court to the following effect:

The respondents are directed to reinstate the petitioner with continuity of service but without any back wages and attendant benefits and the past service of the petitioner shall have to be counted only for the purpose of retiral benefits and not for any other purpose.

With the above modification, the writ

petition is disposed of. No costs.

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31-01-2006

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